

**ADDRESS BY HON. CHIEF JUSTICE DENNIS BYRON
TO THE
ST. KITTS CHAMBER OF INDUSTRY AND COMMERCE
AND
FOUNDATION FOR NATIONAL DEVELOPMENT**

17th June 2000

**Judicial Reforms in the Eastern Caribbean
and
The Caribbean Court of Justice**

Your Excellency Acting Governor-General, Mr. Edmond Lawrence and Mrs. Lawrence; Hon. Acting Prime Minister, Mr. Sam Condor; distinguished Ladies and Gentlemen, it is a great privilege and honour for me to have been invited to be your guest speaker on the 18th Annual St.Kitts-Nevis Private Sector Banquet. It is also a great pleasure for me to be at home once again and I am grateful for this opportunity to renew acquaintances and enjoy the ambiance of this two-island Paradise.

Addressing the business community in a society that is based on the concepts of free enterprise imposes an imperative of dealing with profits. Fortunately, my topic this evening will enable me to establish that there is a linkage between the quality of the performance of the Justice sector and economic and social development. It was significant that I met your President, Mr. Michael Morton, at a Conference organized by the World Bank in Barbados at the end of April this year.

It was at this meeting that he broached the question of inviting me to address this gathering tonight. I have therefore acted on the belief that he considers it useful to look at some of the concepts that were discussed and relate them to our situation here in St. Kitts-Nevis.

Justice Sector Investment

The first point is that in our region, we are fortunate to have a tradition of Law and Order. But increasing levels of crime are a global phenomenon from which we are not immune. In our region the administration of justice has not received a major share of the public purse. In fact in St. Kitts-Nevis the sector receives less than 0.5% of the National Revenue. This is in keeping with the trends throughout the entire Commonwealth Caribbean region. It has been the view that this reflects the perception, that investment in Justice Administration is not a vote-catching activity, and in a democracy the popular will influence spending priorities from the public purse.

I think that we are at a stage in our development when this perception must be changed. Every aspect of our existence is affected by the quality of the performance of the justice sector in our community. I should make the point that the judges are only a part of the justice sector. This sector encompasses all three branches of Government, the Legislative –making laws; the Executive – policing and penal; the Judiciary – adjudicative. It also encompasses non-governmental private sector entities, such as the Bar, Human Rights organizations, Training Institutes, Law schools and other relevant civil society organizations.

Social and Economic Benefits

The benefits from an efficient judicial system will include the following characteristics which impact on our economic and social existence:

- The deterrence of wrongful conduct and protection of individual and public safety and property.
- The facilitation of voluntary exchanges and promotion of social and economic development. The frame work for trade where rights and responsibilities are clear, predictable and enforceable at reasonable cost and in a timely fashion.
- The resolution of private disputes.
- The redress of abuses of power and provision of protection from arbitrary actions by the State, and other powerful organizations and individuals.

- Upholding socially accepted standards of fairness.
- Rendering service to all without distinctions based on ethnicity, race, gender or socio-economic status.

When these issues are properly digested one can understand why at this time so many Governments in our region, have decided to pursue justice sector development for social and economic goals. It has become almost axiomatic that good governance, particularly the establishment of an appropriate legal and regulatory framework, and the development of competent and honest civil service and judicial organizations, are important preconditions for sustainable social and economic development.

I should add that the financial climate for this reform is good as many international donor agencies have made Caribbean Justice Sectors a priority for funding.

Why Judicial Reforms?

In no less an Institution than the World Bank the recently published Policy Document *“Challenges of Capacity Development: Towards Sustainable Reforms of Caribbean Justice Sectors”* the point is made in these terms:

“Links between justice and development is now well articulated in development literature. Effective administration of Justice fosters growth and development by protecting property rights and widening the range of transactions and investments that economic agents are willing and able to undertake.

If people can expect that the justice sector will resolve disputes in a neutral, quick and inexpensive manner, investments and business transactions are less risky and less costly. Consistent enforcement of understandable laws helps provide a stable environment where the long term consequences of economic decisions can be reasonably

predicted and assessed, thereby achieving a level playing field by improving access to justice for all.

An effective and efficient judicial system has the added benefit of making the legal system affordable and accessible for relatively small-sized enterprises and less-privileged citizens, thereby achieving poverty and equity objectives. Moreover, impunity for human rights violations are indicative of a lack of respect for the rule of law in a country."

What judicial reforms ?

The activities of judicial reforms in our region over the next few years will emphasize four general themes.

1. strengthening the information base and improving public awareness
2. developing justice sectors as effective and efficient service providers. One of the visible activities under this head ought to be noticed very soon, when Justice coordination and implementation committees are set up and functioning.
3. strengthening the connection between the justice sector and generally shared social goals. This can be achieved by introducing some form of legal aid, compensation for victims of crime, raising professional standards of the Bar, the Police, establishing non-custodial and alternative sentencing practices, introducing more preventative and rehabilitative measures.
4. modernizing and upgrading justice sectors. This will be characterized by the introduction of appropriate technology, modernization of procedural and other rules.

Tonight I want very briefly to tell you that reforms under these themes are in progress in our community. I think that I will just address you specifically on the steps in place for the modernization and upgrading of the civil justice service on the High Court. It has reached the stage where the Conference of the OECS Heads of Government has approved the 15th of September as the date on which these reforms will take effect, and I am glad for the opportunity to formally make this announcement in St. Kitts-Nevis for the first time.

Although the need for judicial reforms must be balanced with other reform needs in our society, it must be borne in mind that an effective justice system is at the center of all economic and social development. I often tell the story that after the collapse of the Soviet Union the Western world became concerned about the rise of crime and sent in a team to provide assistance. The Mayor of Moscow, when presented with that blank cheque, so to speak, did not ask for more police, nor more guns. He asked for an effective civil justice system. I think that the world's leading scholars have accepted that moving towards the goal of a "just society" has a positive effect on the reduction of crime levels. In our society the quality of our civil justice system has been the subject of much public concern. The complaints that people and business enterprises make most often, relate to concerns about delay, expense and complexity of litigation, and also to the problem of gaining meaningful access to the courts.

The reforms proposed to address these issues involve the following heads of activity:

1. **Civil justice review**

This is characterized by the introduction of new rules of civil procedure in the High Court. These are aimed at reducing delay, expense and complexity in the process. The main features of the reform are the introduction of two modern hopes of judicial innovators. Case management and Alternate Dispute Resolution (ADR).

2. **Case management**

This concept is expected to change the culture of litigation. At the moment civil litigation is driven by the litigant. When a writ is filed nothing happens until it is served. And then nothing happens unless one of the parties takes another step. The court will not intervene unless there is an application or a summons. The people who complain have suggested, and not without evidential support, that it can take 3-6 years to have a civil case completed. We want to change this and make the court itself

responsible for the progress of litigation through the system to final disposition of the dispute according to time standards fixed and managed by the court. The primary objective of the rules will be the attainment of a just resolution of disputes.

3. Pre-Trial Protocols

We will require that certain steps are taken before a writ is issued. I will give a quick example. Just a couple weeks ago I received a complaint from a man whose application for a loan to purchase a backhoe for a business venture, was refused because the bank's lawyer in searching the appropriate court registers, discovered that there was a pending judgment against him since 1992. This is a man who owns property both real and personal, and is fairly well off. The judgment debt was for just over \$19,000.00. He had been in a motor accident and acknowledged that he was wrong. He had third party insurance, paid his excess, and fixed his vehicle. When he went to his insurers they showed him the file and said they were always willing to pay the claim, but nobody had ever made a claim. The failure of the plaintiff's lawyer to investigate the matter before issuing the writ, caused everybody, including his own client a lot of unnecessary grief. Following certain pre-trial protocols will reduce the number of cases that reach the court, and will improve the efficient prosecution of those that do.

4. Case Management Conference

At an early stage in the process of defended cases there will be a Case Management conference conducted by a new judicial officer, The Master. I can indicate that two Masters have already been appointed. One of them is a citizen of this Federation. He is Mr. Hugh Rawlins, who is presently occupied as Lecturer in Law at the University of the West Indies Cave Hill Campus. He will be taking up this appointment on 1st August 2000. The purpose of the Case Management Conference will be to assist the parties

to prepare for trial. The litigants will be expected to be present and participate in this exercise. At this early stage in the proceedings the Master will evaluate the dispute and determine whether it requires a trial or is amenable to Mediation.

5. Mediation

We will be setting up a system of Mediation under the supervision of the court. The Mediation will be voluntary. In the jurisdictions which established such a programme, Mediation succeeds in about 40% of the cases referred to it. We expect that it will have much the same result in our jurisdiction and will result in the final disposition, of a substantial number of disputes in a timely, expeditious and cost-effective manner.

6. Early Trial Date

The matters that require a trial will receive orders for the preparation for trial in accordance with fixed time standards, and at that early stage in the process the Master is expected to fix the time-frame within which the case will finally be heard.

7. Cultural Changes

Cultural changes will be required from the bench and from the bar alike. The bench has committed itself to the changes. One of the most important is the issue of the timely delivery of Judgments. The judiciary will be subscribing to a new Code of Judicial Ethics. One of the commitments being made will be to produce all judgments within 3 months.

8. Court Reporters

The trial process itself will be improved with the introduction of professional court recording systems. This will relieve the Trial judge from having to be the official recording clerk in addition to his adjudicative duties. It will also permit the proceedings to proceed at conversational speed. This alone is not very expensive, but it has been estimated that it could triple the judge's productivity. The investment will

have the same effect of introducing one or more new judges and would cost considerably less – bearing in mind that the cost of a new judge is not only his remuneration, but includes *inter alia* the provision of court space, and support staff and equipment.

9. Computerisation

The new system will require efficient administrative support. It will also require compilation, dissemination and analysis of information related to the Court's performance. Central to this process is the introduction of a computerized case management and court administrative system.

10. Judicial Education

These innovations cannot be successfully implemented without training programmes for the Judiciary itself, and its support staff, the Bar Associations, and also public awareness programmes. These have already commenced and will be continuing. As many of you would know we already have in the Eastern Caribbean a Judicial Education Institute. This has been carrying the bulk of the load, but has been working with a number of other organizations, including the Hugh Wooding Law School and the Commonwealth Judicial Education Institute.

The Caribbean Court of Justice

Your president asked me to address a few remarks on the proposed Caribbean Court of Justice. I will try to give a brief rationale in the remainder of the time allotted to me.

What is proposed

The Caribbean Court of Justice has been designed to perform two distinct and different roles. In the first place, it is to be the final Court of Appeal in the Commonwealth Caribbean, replacing the Privy Council. In the second place it is to create an entirely new court to adjudicate in disputes arising under the CARICOM Treaties.

Rationale

It is unfortunate that in recent times spokesmen for this Court linked its creation to the controversial issue of the death penalty. The public association between the two ideas has done a lot to undermine public support. The very concept of establishing a new court, because of dissatisfaction with the decisions of the existing one, raises the vexed question of judicial independence. If one could set up a court to make decisions to accord with prevailing political positions, then in my opinion you would not have a court at all. What you have is just another administrative tribunal.

Fortunately, there are other and better reasons for having a final Court of Appeal in the Caribbean. I would mention two tonight. The first is that it is an incident of independence. When a nation becomes independent one of the areas over which it ought to take control, is the Administration of Justice. Until it does this, it has not completed the repatriation of power, from the former colonial power.

The second is really the historical way in which the first has expressed itself throughout the British Commonwealth. At the beginning of the last century, the Privy Council was the final Court of Appeal for all the British Dominions around the globe. By January 2000, the jurisdiction had lessened to just a few. In fact, the Caribbean is one of the last areas to retain the court. And, it is clear from historical review that the time will inevitably come when this too, must end.

The rationale for a court to resolve disputes over the trading and other regional institutions of the region, should be obvious. This will facilitate the consistent development of intra regional relations. It will also make our region a world leader in an aspect of regional judicial organization, which would lead to economic, social and other benefits, for a group of Independent Nations, bound together by simple Treaty obligations, now to be interpreted and enforced by independent judicial machinery .

Safeguards

Many people have expressed the fear that no matter how good the idea, the politicians in the Caribbean will seek to interfere in the independence of the Court, and undermine its credibility as an impartial and neutral adjudication body. My answer to that is that the theory for establishing free and independent courts is advanced and well documented. The manner of providing guarantees for justice, is to build in safeguards in the Constitutional arrangements for the court.

The safeguards and the form in which they are to operate have already been conceived and are available for study and criticism. In my view such safeguards, backed up by a well-informed and vigilant populace, should succeed in the ideal of a free and independent court.

The last safeguard is, of course, the character of the judges who serve on the court. I think that in our region the court has maintained a reputation for integrity, and, as the public become more aware, and the professionals and philosophers become more outspoken, the trend should get better and not worse.